IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 31.10.2006

CORAM:

THE HON'BLE MR. JUSTICE P.JYOTHIMANI

W.P.No.8115 of 1998

Kathissa Mohan ... Petitioner

Vs.

1. Government of Tamil Nadu,
rep.by its Secretary,
Department of Housing and
Urban Development,
Fort St. George, Chennai 9.

2. Tamil Nadu Housing Board,
Rep.by its Chairman and Managing Director,
Nandanam, Chennai 600 035.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Certiorari, directing the respondents and quash the order of the first respondent contained in G.O.Rt.No.339 dated 20.09.1995 confirming the order of the second respondent in its proceedings No.DC-4/86895/92 dated 09.08.1994.

For Petitioner : Party in Person
For Respondent 2 : Mr.I.Sathish for
Mr. R.Girirajan

O R D E R

This writ petition is filed challenging the order of the first respondent in G.O.Rt.No.339 dated 20.09.1995 confirming the second respondent's order dated 09.08.1994.

2. The case of the petitioner is that he was working in the second respondent office, Besant Nagar Division from October 1985. He was placed under suspension on 18.10.1985. On the ground of contemplating enquiry into grave charges stating that he demanded and received a sum of Rs.150/- as bribe from one Sreeramakrishnan for furnishing particulars regarding the balance due in respect of a plot allotted to one V.R.Krishnan who is the father of the said Sreeramakrishnan. When the petitioner was arrested even on 14.10.1985 by Vigilance Department, he has intimated the Chairman

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about the reason.

3. The second respondent has issued a charge memo against the petitioner on 10.12.1986. For the above said charge, the petitioner has submitted his explanation on 23.12.1986. One Mrs.N.Sarsawathi a Revenue Officer of the Board was appointed as Enquiry Officer. Without even examining the said Sreeramakrishnan who is stated to have complained that the petitioner has demanded and accepted the bribe, the Enquiry Officer has submitted a report after examining other witnesses. The Enquiry Officer has only relied upon the statement of the petitioner dated 14.10.1985 given to the Police Officer under Section 161 Crl.P.C. The procedure followed by the Enquiry Officer in allowing the witnesses to cross-examine was not proper. The petitioner has submitted his return brief.

4. The second respondent by his order dated 27.08.1989 has removed the petitioner from service by intimating the resolution of the Board dated 30.12.1988. The Enquiry Officer's report shows that the petitioner has only demanded the bribe and there was no proof of accepting the bribe. However, the said order dated 27.08.1989 proceeds as if, the petitioner has demanded and received the bribe. Therefore, the petitioner has filed W.P.No.2527 of 1992 and this court by an order dated 26.11.1992 allowed the writ petition setting aside the said order dated 27.08.1989 and remanding the matter to the punishing authority for passing fresh orders.

5. It is pursuant to the said direction, the second respondent has passed orders on 09.08.1994 stating that the first respondent has directed the second respondent to reinstate the petitioner and then revert the petitioner as Junior Assistant. Accordingly, the second respondent, in the said order dated 09.08.1994 has reinstated the petitioner and reverted him as Junior Assistant with minimum pay of scale as Junior Assistant. It was thereafter, the petitioner has preferred an appeal before the first respondent and the first respondent by the impugned G.O.Rt.339 dated 20.09.1995 has rejected the appeal, as against which the present writ petition is filed by raising various legal points including that the impugned orders passed without application of mind, it is passed in violation of principles of natural justice. The statement given by the various witnesses under 161 Crl.P.C. is treated as substantive evidence, that the police has dropped the charges in the criminal case, since no offence has been made out. The Enquiry Officer has considered the testimony of Sreeramakrishnan and concluded that there is no proof that the petitioner has accepted the bribe, even though, it is stated that the demand has been proved, that even before the Enquiry Officer, a witness namely Rajamani has stated that it was one Mr.Kesavan who has demanded the money on 14.10.1985 and not the petitioner apart form the lacuna in the evidence of other witnesses.

6. The respondents have filed counter affidavit. According to the respondents, after the order passed by this Court in W.P.No.2527 of 1990

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remanding the matter, the board has passed a resolution by reducing the punishment of reverting the petitioner to the post of Junior Assistant with the minimum pay scale instead of confirming the order of dismissal and the reversion was immediately effected. While it is true that the Enquiry Officer has reported that the fact of demanding of the bribe by the petitioner has been proved and the acceptance on the part of the petitioner has not been proved beyond doubt, due to the reason money is state to have been recovered from the complainant during the incidence, the Enquiry Officer has also stated that the petitioner on seeing the Vigilance and Anti Corruption staff would have returned the money to the complainant.

7. It is also the case of the respondents that the Enquiry Officer has conducted enquiry in accordance with law. Examining of the first witness Rajamani is in accordance with law, she is also a prosecution witness. It is also the case of the respondents that the statement recorded under Section 161 Crl.P.C. was not taken as proof by the disciplinary authority. It is also the case of the respondents that the petitioner duly participated in the enquiry and he has cross-examined all the witnesses.

8. Since the counsel who has filed vakalat for the petitioner has withdrawn, the petitioner himself has appeared. According to the petitioner, when once the Enquiry Officer has clearly stated that only the demand portion has been proved and the acceptance of bribe has not been proved, the charge should have been dropped and in such circumstances the order of reversion is only illegal. It is the case of the petitioner that when punishing authority differs from the Enquiry Officer proper reason must be given and in the present case, the respondents have not given any proper reason for the same excepting to reinstate the petitioner and reverting him, especially, after the order of remand passed by this Court and the appellate authority has not taken into consideration of the said facts.

9. On the other hand, the learned counsel for the respondents would submit that it was based on the resolution of the board dated 09.06.1993, the petitioner was reinstated and the impugned order dated 09.08.1994 was passed taking a lenient view and therefore, according to the learned counsel for the respondents, the impugned orders are perfectly in accordance with law.

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10. A reference to the entire records show that originally, by an order dated 27.08.1989, the second respondent has removed the petitioner from service on the basis of the enquiry and relying on the enquiry report that was challenged by the petitioner before this Court in W.P.No.2527 of 1990. It is not in dispute that this Court has allowed the said writ petition by an order dated 26.11.1992 having found that the enquiry report shows that only the portion of demanding of bribe has been proved and acceptance has not been proved and in spite of that the punishing

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authority has passed the order of punishment and therefore, it was incumbent on the part of the punishing authority to give reason as to why a different decision has been taken and this Court has found categorically that there is no reason stated by the punishing authority for differing from the findings of the Enquiry Officer. The categoric findings of this Court in this regard was as follows:

> "No reasons are stated in the impugned order as to how such a conclusion has been arrived at. When the punishing authority, normally differs from the enquiry report, the least could be expected is that reasons should be stated therein as to why a different decision has been taken. A reading of the impugned orders shows that no reasons are stated therein for differing from the report of the enquiry officer. However, the learned counsel appearing for the second respondent Board contense that this court can come to the conclusion that at any rate, the 'Demand' is proved. I do not think that such a conclusion can be arrived at by this court, since no reasons are stated by the punishing authority for differing from the findings of the enquiry officer and it is not possible for this court to guess as to what was passing on the mind of the punishing authority when the quantum of punishment was arrived at."

11. It was with that categoric finding, this Court has set aside the original order of punishment namely termination dated 27.08.1989 by allowing the writ petition and remanded the matter to the punishing authority for passing orders afresh. As per the finding of Court, this means that the second respondent being the punishing authority should have passed orders and giving reason for differing from the Enquiry Officer's report. This was the crux of the issue, especially, when it is not even the case of the respondents that the order passed by this Court in the said writ petition has not become final.

12. Very strangely, even after order passed by this Court dated 26.11.1992, the second respondent has passed the impugned order dated 09.08.1994 by referring to the letter of the Housing and Urban Development Department dated 25.07.1994 stating that the Government has directed to reinstate the petitioner into service and reverting him as junior most Junior Assistant, as if that was the direction given by this Court in the writ petition. In this regard, the relevant portion of the impugned order passed by the second respondent dated 09.08.1994 deserves to be extracted:

> "The Government in letter(Ms) No.512 dated 25.07.1994 in reference third cited among other things had directed to reinstate Thiru S.Mohan into service of Tamil Nadu Housing Board and to revert him as Junior most Junior Assistant based on W.P.No.2527 of 1990 on the file of High Court filed by Thiru S.Mohan.
>
> Accordingly, Thiru S.Mohan, is reinstated into the Board's service with immediate effect and reverted as Junior Assistant

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and posted as Junior most Junior Assistant as on date with the minimum pay scale of Junior Assistant. The period of absence is treated as leave to which he was eligible including the extra-ordinary leave with loss of pay."

13. Therefore, a perusal of the impugned order of the second respondent dated 09.08.1994 would show categorically that the second respondent has not cared to take into consideration the earlier order of this Court namely by passing an order with reason as to why the second respondent being the punishing authority has differed from the Enquiry Officer's report. On the contrary the order of reversion of the petitioner after reinstatement is passed on the direction of the Government dated 25.07.1994 which is certainly unauthorized and outside the purview of the powers of the second respondent being the punishing authority. It is astonishing that the second respondent has not even chosen to give reason and the order dated 09.08.1994 is passed forgetting the fact that the second respondent while acting as a punishing authority should have applied its mind for the purpose of arriving at a conclusion as to whether the charge against the petitioner is proved, especially after the original order of punishment dated 27.08.1989 was set aside by this Court by an order dated 26.11.1992.

14. Therefore, I have absolutely no hesitation to come to the conclusion that the order of the second respondent dated 09.08.1994 is unsustainable in law and the facts and is in a flagrant violation of the order of this Court as stated above. It is unfortunate that the first respondent being the appellate authority has not even chosen to consider this aspect except to state that the petitioner has not chosen to make any new legal point and therefore, the appeal deserves to be dismissed. In these circumstances, the impugned orders of the first and second respondents deserves to be set aside.

15. The next question as to whether the matter has to be further remanded back to the second respondent deserves to be considered in the light of the facts and circumstances stated above. As I have stated earlier, in spite of the categoric finding given by this Court holding that the earlier order of termination dated 27.08.1989 is not valid in law and remanding the matter for passing fresh order, the second respondent being the punishing authority has not passed any order except to follow direction of the Housing and Urban Development Department and this fact has not been considered by the appellate authority also.

16. Therefore, I am of the considered view that no useful purpose will be served in remanding the matter back to the respondents once again. In my considered view, the second respondent has not passed any order in accordance with the direction of this Court except stating that the order of reinstatement and the reversion is passed as per the order. It is a clear misnomer and deserve to be condemned.

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17. In view of the same the writ petition stands allowed and the impugned order passed by the second respondent dated 09.08.1994 and the first respondent dated 20.09.1995 are set aside with the cost of Rs.5,000/- to be paid by the second respondent to the petitioner.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To
1. The Secretary,
Government of Tamil Nadu,
Department of Housing and
Urban Development,
Fort St. George, Chennai 9.

2. The Chairman and Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai 600 035.

+ 1 CC To Mr. Kathissa Mohan[party in person] SR NO. 51071

+ 1 CC To Mr. R.Girirajan, Advocate SR NO. 51053

+ 1 CC to the Government Pleader SR NO 51132

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